

REMARKS

The Examiner has rejected Claims 1, 2, 9, 34, and 37-45 under 35 U.S.C. 101 as being directed to non-statutory subject matter. Applicant respectfully notes that such rejection is avoided in view of the amendment made to independent Claim 1 hereinabove.

The Examiner has rejected Claim 42 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully notes that such rejection is avoided in view of the amendment made to Claim 42 hereinabove.

The Examiner has rejected Claims 1, 2, 9, 21, 27-30, 37-39, and 41-45 under 35 U.S.C. 103(a) as being unpatentable over Khaishgi et al. (U.S. Patent No. 6,658,394), in view of Guirguis ("Network- and Host-Based Vulnerability Assessments: An Introduction to a Cost Effective and Easy to Use Strategy"), in view of Tiso ("Automated Security Scanning"), in view of Bunker, V et al. (U.S. Patent Publication No. 2003/0028803), and further in view of Blyth ("An XML-based architecture to perform data integration and data unification in vulnerability assessments"). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to the independent claims. Specifically, applicant has amended the independent claims to at least substantially incorporate the subject matter of Claim 41.

With respect to the independent claims, the Examiner has relied on Page 16, first paragraph, as well as Figures 1 and 6 (reproduced below) from the Blyth reference to make a prior art showing of applicant's claimed technique "wherein the scanning engine parses the set of XML files and stores records of the parsed set of XML files in the database in association with an account number of a provider of the online service" (see this or similar, but not necessarily identical language in the independent claims).

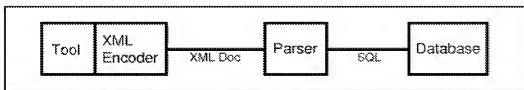


Figure 1: The general architecture.

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$ psxml -p 80 -v -h 10.63.19.12 ; xmldb -v -c  
/etc/xmldb.conf  
The PortScanning XML Tool Version 1.0 (ajcblyth@qlam.ac.uk)  
Interesting ports on www.my-victim.com (10.63.19.12)  
Port           State      Service  
80              open      http  
Connecting to database xmldb on host db.my-hacker.ac.uk  
Inserting information regarding port: 80/open/http
```

Figure 6: Port scanning and database tools output.

Applicant respectfully notes that the above excerpt relied on by the Examiner merely discloses that “[t]he output from the port scanning tool, or the vulnerability scanning tool, is used to create the XML document that is then passed to the parser, which uses it to create a DOM tree,” and that “[t]he parser parses the XML documents with reference to their document type definitions (DTD) to check that the XML documents are valid and well formed” (Page 16, first paragraph). Additionally, the figures relied on by the Examiner merely disclose a parser, and additionally disclose “an example of the psxml and xmldb tools running in verbose mode,” where “psxml is a simple port scanning tool” and where an “XML document is... passed to the back-end XML database system called xmldb” (Page 19, second paragraph, not specifically cited).

However, merely using output from a port or vulnerability scanning tool to create an XML document that is parsed to check that the document is valid and well formed, in addition to disclosing a port scanning tool and a back-end database system, as in Blyth, fails to disclose a technique “wherein the scanning engine parses the set of XML files and stores records of the parsed set of XML files in the database in association with an account number of a provider of the online service” (emphasis added), as claimed.

Applicant respectfully emphasizes that the excerpts from Blyth relied on by the Examiner simply disclose parsing an XML document, and do not even mention an account number of a provider of the online service, let alone specifically teach that “the scanning engine parses the set of XML files and stores records of the parsed set of XML files in the database in association with an account number of a provider of the online service” (emphasis added), as applicant claims.

In the Office Action dated 09/03/2009, the Examiner has argued that “Fig. 6 [of Blyth] clearly discloses [that] the result of the scan includes the URL and an IP address of a provider of the online service both of which can be interpreted as an account number,” that “[b]oth the URL and an IP address are registered in DNS and are used to identify the online service provider,” and that “therefore both the URL and the IP address can be interpreted as an account number of a provider of the online service.”

Applicant respectfully disagrees and notes that Figure 6 of Blyth discloses “[p]ort scanning and database tools output,” where, as mentioned above, the output is used to create an XML document that passed to a parser. However, merely disclosing an output of a port scanning tool and a database tool that is used to create an XML document, where the output includes a URL and IP address, as in Blyth, fails to suggest that “the URL and the IP address can be interpreted as an account number of a provider of the online service,” as argued by the Examiner, much less a technique “wherein the scanning engine parses the set of XML files and stores records of the parsed set of XML files in the database in association with an account number of a provider of the online service” (emphasis added), as claimed by applicant. Nowhere in the above excerpts does “the scanning engine... stor[c] records of the parsed set of XML files in the database in association with an account number of a provider of the online service” (emphasis added), as specifically claimed by applicant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or

in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has at least substantially incorporated the subject matter of former Claim 41 into the independent claims.

With respect to the subject matter of Claim 41 (now at least substantially incorporated into the independent claims), the Examiner has relied on Paragraphs [0051]-[0052] from the Bunker reference to make a prior art showing of applicant's claimed technique "wherein the scanning is performed according to a schedule" (see this or similar, but not necessarily identical language in the independent claims).

Applicant respectfully notes that the above excerpts relied on by the Examiner merely disclose that "[t]he job scheduling module 202 can initiate customer jobs at any time" and that "[i]t uses the customer profile 204 information to tell the Command Engine 116 what services the customer should receive, for example, due to having been purchased, so that the Command Engine 116 can conduct the appropriate range of tests" (Paragraph [0052] – emphasis added).

However, merely disclosing a job scheduling module that initiates customer jobs and uses a customer profile to tell a command engine what services a customer should receive, as in Bunker, fails to disclose a technique "wherein the scanning is performed

according to a schedule” (emphasis added), as claimed by applicant. Merely disclosing a job scheduling module that initiates customer jobs, as in Bunker, fails to disclose a technique “wherein the scanning is performed according to a schedule” (emphasis added), as specifically claimed by applicant.

Again, since at least the third element of the *prima facie* case of obviousness has not been met, especially in view of the amendments made hereinabove to the independent claims, a notice of allowance or a proper prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 42, the Examiner has again relied on Paragraphs [0051]-[0052] from the Bunker reference to make a prior art showing of applicant’s claimed technique “wherein the schedule is requested by the customer” (as amended).

Applicant again notes that the above excerpts from Bunker relied on by the Examiner merely disclose a job scheduling module that initiates customer jobs and uses a customer profile to tell a command engine what services a customer should receive, which fails to disclose a technique “wherein the schedule is requested by the customer” (emphasis added), as claimed by applicant. Merely disclosing a customer profile that is used to tell a command engine what services a customer should receive, as in Bunker, fails to disclose that “the schedule is requested by the customer” (emphasis added), as specifically claimed by applicant.

Again, since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claim 46 below, which is added for full consideration:

“wherein the web page object appears invisible to the visitor after it is rendered by the visitor's browser due to a single-dot clear GIF image being provided to the visitor for display on the visitor's browser” (see Claim 46).

Again, a notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

To this end, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NA11P647).

Respectfully submitted,
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